Supreme Court, U.S.
FILED
AUG 20 1991
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-148

In The

Supreme Court of the United States

October Term, 1990

MAURICE L. KLEIN,

Petitioner,

v.

IOWA DEPARTMENT OF REVENUE AND FINANCE,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A TAX DEDUCTION STATUTE WHICH TREATS MARRIED COUPLES AS ONE ECONOMIC UNIT FOR PURPOSES OF INCOME TAX DEDUCTIONS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

II. WHETHER PETITIONER CAN MAINTAIN A DUE PROCESS "IMPROPER DELEGATION" CHALLENGE TO A TAX EXEMPTION STATUTE WHEN SUCH ISSUE WAS NOT RAISED OR DECIDED BELOW.

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STATEMENT OF THE CASE

The Respondent, Iowa Department of Revenue and Finance (hereinafter referred to as the "Department"), accepts Petitioner's statement of facts as essentially correct but incomplete. Certain clarifications as to the issues and additions to the facts, as stated below, are necessary.

It should be noted that no issues as to Mr. Klein's 1981 Iowa income tax return are before this Court as no issues concerning this return were appealed to, argued before or decided by the Iowa Supreme Court. (Appendix I, Petition for Writ of Certiorari, pps. 86-87). Thus, the only issues presently reviewable are certain constitutional issues which pertain to Mr. Klein's 1982 Iowa income tax return.

As to the facts, certain pertinent facts were omitted from Petitioner's statement of the case. The following facts were presented at the administrative level during the hearing on the merits, are reflected in the proposed order of the administrative law judge (Appendix B, Petition for Writ of Certiorari, pps. 39-42) and were accepted by the Iowa Supreme Court. (Appendix I, Petition for Writ of Certiorari, pps. 84-85):

Maurice L. Klein and LaVonne Marie Breen were married on November 27, 1981. Upon marriage, LaVonne and her two children from a previous marriage moved into Mr. Klein's home. From that time until November 12, 1982, Mr. Klein, LaVonne and the children resided together in one residence as a family. On November 12, 1982, the couple became estranged and LaVonne and the children moved to another residence. With minor exceptions, at all pertinent times before, during and after their

marriage LaVonne and Mr. Klein were both employed. No legal separation or decree of separate maintenance was ever sought or granted. It was not until August 19, 1983, that Mr. Klein and LaVonne were divorced.

In February, 1983, Mr. Klein filed an individual Iowa income tax return for the calendar year 1982 electing to file under the filing status of "married filing separate returns." On that return, Mr. Klein itemized his deductions. On her 1982 return, LaVonne elected to file separately and used the standard deduction pursuant to Iowa Code § 422.9(1).

After auditing Mr. Klein's 1982 return, the Iowa Department of Revenue and Finance disallowed Mr. Klein's itemized deduction and replaced it with the standard deduction pursuant to Iowa Code § 422.9(4) which states that "where married persons file separately, both must use the optional standard deduction if either elects to use it." This is the provision which Mr. Klein has challenged.

REASONS WHY THE PETITION SHOULD BE DENIED.

1. **Petitioner has identified no special or important reasons why a Petition for Writ of Certiorari should be granted in this case pursuant to Supreme Court Rule 10.**

Mr. Klein has cited no conflicting decisions by other state courts of last resort on the issues. (Table of Authorities, Petition for Writ of Certiorari, pps. iv-v.) Further, not one of the five United States Courts of Appeal cases cited

were taxation classification cases. This fact is of special import since Petitioner is challenging a tax exemption classification statute and this Court has long recognized that "in taxation, even *more than in other fields*, legislatures possess the *greatest* freedom in classification" (emphasis added), *Madden v. Kentucky*, 309 U.S. 83, 88 (1940) and no constitutional violation was found in even one of the five cases cited!

As to the five federal district court cases cited, again, not one is a taxation classification case and in only one was a constitutional infirmity found, that case being easily distinguishable since it involved a suspect classification, race, which triggered strict scrutiny analysis.

Further, of the six Supreme Court cases cited, only one, *Madden v. Kentucky*, 309 U.S. 83 (1940), is a tax exemption case, and no constitutional violation was found. Therefore, *no* conflicting precedence has been cited to this Court.

Mr. Klein simply requested that certiorari be granted "to better protect all taxpayers of the state of Iowa who file separate returns from emotionally motivated elections and unequal treatment. . . . " (Conclusion, Petition for Writ of Certiorari, p. 21.) This argument is not only mundane, it is very misleading since not "all taxpayers of the state of Iowa who file separate returns" are affected by the statutory provision currently challenged. This issue is actually unlikely to affect others since the circumstances of this case are highly unusual and bizarre and the issue is of a non-recurring nature and generally involves small monetary amounts, approximately $775.00 in the present case. In fact, the *only* persons who could

possibly be affected at all under the Iowa statute at issue would be those who, like Mr. Klein:

1. Are Iowa taxpayers, *and;*

2. Were married but estranged from their spouses, *and;*

3. Failed to seek a legal separation or decree of separate maintenance, *and;*

4. Elected to file a separate return for the tax year, *and;*

5. Had a spouse who filed separately and claimed the standard deduction on his/her return, *and;*

6. Had itemized deductions in excess of the "married filing separate" standard deduction, *and;*

7. Was unable to reach an agreement with his/her spouse as to the election, *and;*

8. Failed to have the dissolution court consider the *net* tax consequences of the elections to file separately and to take the standard deduction in the property settlement as required in Iowa Code § 598.21(g).

Since all eight of the above-stated conditions must be present, and many are within the taxpayer's control, it is reasonable to conclude that few people, if any, are likely to place themselves in Mr. Klein's position. Clearly, no rule 10 types of special or important reasons for granting certiorari have been stated by Petitioner.

2. This Court has no jurisdiction to entertain the due process issue of "improper delegation" as that issue was never raised in the Court below.

On pages 18-20 of his Petition, Mr. Klein purports to raise a due process "improper delegation" issue. This particular constitutional issue has never been pled, briefed or argued in this case before and the Iowa Supreme Court did not entertain it or rule based upon that issue. (Appendix I, Petition for Writ of Certiorari, pps. 94-97). In fact, not one of the cases presently cited as to that issue were ever cited to the Iowa court. (Appellee/ Cross-Appellant's Iowa Supreme Court brief, pps. 22-26). Therefore, this Court clearly would have no jurisdiction to entertain the due process issue in the first instance even if certiorari were granted as to the equal protection issue. *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. ___, 58 U.S.L.W. 4135 (1990).

3. The Iowa Supreme Court's decision is consistent with prior precedence and no substantial federal question is presented by Petitioner.

The Iowa Supreme Court employed rational basis scrutiny in reaching its decision on the constitutional equal protection issue in this case. (Appendix I, Petition for Writ of Certiorari, pps. 94-97). This level of scrutiny is correct since the Petitioner seeks to challenge a tax deduction classification within the context of a generally applicable economic regulation. *Regan v. Taxation With Representation*, 461 U.S. 540 (1983); *Madden v. Kentucky*, 309 U.S. 83, 88 (1940). Mr. Klein conceded that rational basis analysis was the correct standard and, in fact, never argued before the Iowa Supreme Court that any other

level of scrutiny was required. (Appellee/Cross-Appellant's Brief, p. 24.) Further, even assuming, arguendo, that Mr. Klein may now seek to justify a stricter analysis, no basis for a stricter analysis has been shown by Mr. Klein since Iowa Code §§ 422.9(1) and (4) do not purport to regulate the status or relationship of anyone and do not do so, *Califano v. Jobst*, 434 U.S. 47, 58 (1977), and no discriminatory intent on the part of the Iowa legislature has even been alleged let alone proven as required in a disparate impact claim. *Personnel Adm'r. of Massachusetts v. Feeney*, 442 U.S. 256 (1979).

Mr. Klein also conceded, and it is obvious, that Iowa Code § 422.9(4) creates no classification of married males vs. married females on its face. On the contrary, married persons are treated as one economic unit for purposes of the deduction in § 422.9. This is, in fact, the basis on which the deduction is granted to them. *As an economic unit*, they may elect to deduct either the standard deduction or itemized deductions. Mr. Klein now simply argues that "it is not necessarily rational in today's society to believe that the economics of marriage justify the treatment of married persons as one economic unit for the purposes of personal tax deductions." (Petition, p. 10).

In response to this argument, it should be noted that the economic unit justification recognized by the Court was urged by the Department in its brief to the Iowa Supreme Court and Mr. Klein had the opportunity to rebut it via a reply brief. However, instead of rebutting it, he conceded that the itemized deductions he wanted to take for himself were those "incurred in the operation *of the household*" as one economic unit. (Appellee's Reply to the Appellant's Responsive Brief, p. 9). This fact is fatal to

Mr. Klein's present Petition since it is axiomatic that the statute enjoys a presumption of constitutionality and he had the burden of negating every reasonable basis which may support the statute. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 195 (1983).

Further, even assuming, arguendo, that Mr. Klein may now challenge that justification, it was perfectly rational for the Iowa Supreme Court to conclude that the economics of marriage justify treating the marital estate as one economic unit. It has long been recognized by this Court that "both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status" and generally results in an economic merger and economies relating to expenses. *Califano v. Jobst*, 434 U.S. at 53; *Bowen v. Gillard*, 483 U.S. 587 (1987); *Lyng v. Castillo*, 477 U.S. 635 (1986). This conclusion is clearly valid as to tax deductions since certain relevant economies relating to deduction expenses will generally result from marriage, i.e., one main residence to purchase, maintain and heat rather than two, one set of major appliances and furniture to purchase, maintain and replace, etc.

Further, it is reasonable to assume that, in most cases, married persons can be expected to do what is economically beneficial to the marital community as a whole. Therefore, as the Iowa Supreme Court recognized, the restriction on the election found in § 422.9(4) is also reasonable, rational and even necessary to prevent married persons from "double dipping" the deduction by electing to file separately, shifting all of the allowable itemized deductions to one spouse to claim them all and then attempting to also claim the standard deduction

amount for the other spouse under § 422.9(1). Thus, the means chosen by the legislature to prevent "double dipping" is actually an imminently fair and reasonable alternative in that it prevents "double dipping" while also preserving some deduction for both spouses in cases of dispute. The result is that each spouse will be allowed to claim at least the standard deduction and will not be stripped of his/her deduction entirely by the other spouse which is what Mr. Klein seeks to do to LaVonne in this case.

CONCLUSION

For the above-stated reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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